



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201305013

NOV 05 2012

Uniform Issue List: 408.03-00

T:EP:RA:T1

Legend

Taxpayer A	=
IRA B	=
Account C	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Amount 5	=
Bank L	=
Bank M	=

Dear :

This is in response to your request dated May 24, 2011, as supplemented by correspondence dated August 3, 2011, June 11, 2012, and July 2, 2012, July 25, 2011, in which you request, through your authorized representative, a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that he received a total distribution of Amount 1 from IRA B maintained by Bank L. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) of the Code was due to Bank M's error in failing to open an IRA account with a check payable to "Taxpayer A's Traditional IRA".

On January 20, 2010, Taxpayer A took a total distribution from IRA B in order to change the custodian of his IRA from Bank L to Bank M. Taxpayer A received the distribution in the form of a cashier's check equal to Amount 1 that was payable to the "Taxpayer A Traditional IRA." On January 27, 2010, Taxpayer A went to Bank M with the check and instead of depositing Amount 1 into a traditional IRA as the check provided, Bank M provided forms for Taxpayer A to sign which created a non-IRA savings account, Account C, and a checking account. Bank M then deposited Amount 2 into Account C and Amount 3 into the checking account. Taxpayer A represents that he intended to roll over Amount 2 into an IRA account.

During 2010, 2011, and 2012, Taxpayer A withdrew amounts totaling Amount 4 from Account C for his living expenses and required minimum distributions during these years. As of June 29, 2012, Amount 5 remains in Account C.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the rollover of Amount 5 from IRA B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money or any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into

such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to an error committed by Bank M, which failed to deposit Amount 2 into an IRA as clearly indicated on the check presented to Bank M by Taxpayer A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 5 into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day rollover requirement, are met with respect

to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

This letter ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact . Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Notice of Intention to Disclose
Deleted copy of this letter

cc: